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MONTANA LEGISLATIVE HISTORY

Chapter 614 1989

Bill H _____ S 437 Original bill & history ✓ C

H. Committee on Human Services		S. Committee on Public Health	
Hearing Date(s) _____	___C	Hearing Date(s) _____	___C
_____	___C	_____	___C
_____	___C	_____	___C
3/13	✓C	2/17	✓C
Date Out 3/13	✓C	out 2/17	✓

Did this bill originate in an interim committee? ___Yes X No

Committee _____ Report _____

SENATE BILL NO. 437

INTRODUCED BY NORMAN, J. BROWN

IN THE SENATE

FEBRUARY 15, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON PUBLIC HEALTH, WELFARE & SAFETY.
	FIRST READING.
FEBRUARY 17, 1989	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 20, 1989	PRINTING REPORT.
	PASS CONSIDERATION.
FEBRUARY 21, 1989	SECOND READING, DO PASS AS AMENDED.
	ENGROSSING REPORT.
FEBRUARY 22, 1989	THIRD READING, PASSED. AYES, 47; NOES, 0.
	TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 22, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON HUMAN SERVICES & AGING.
FEBRUARY 28, 1989	FIRST READING.
MARCH 14, 1989	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 18, 1989	SECOND READING, CONCURRED IN AS AMENDED.
MARCH 21, 1989	THIRD READING, CONCURRED IN. AYES, 94; NOES, 0.
	RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

APRIL 3, 1989 — RECEIVED FROM HOUSE.

SECOND READING, AMENDMENTS CONCURRED IN.

APRIL 5, 1989 — THIRD READING, AMENDMENTS CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

LC 1408/01

Senate BILL NO. 437

INTRODUCED BY Norman J. Bird

A BILL FOR AN ACT ENTITLED: "THE AIDS PREVENTION ACT; MANDATING THAT HIV ANTIBODY TESTING BE ADMINISTERED ONLY IN CONJUNCTION WITH ADEQUATE PRETEST AND POSTTEST COUNSELING IN ACCORDANCE WITH STANDARDS ESTABLISHED BY THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES; REQUIRING INFORMED CONSENT FOR HIV ANTIBODY TESTING; LIMITING THE DISCLOSURE OF THE RESULTS OF HIV ANTIBODY TESTING; REQUIRING HIV ANTIBODY TESTING OF DONORS OF SEMEN AND HUMAN BODY PARTS; AND AMENDING SECTIONS 50-16-529 AND 50-16-530, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1.** Short title. [Sections 1 through 7] may be cited as the "AIDS Prevention Act".

NEW SECTION. **Section 2.** Statement of purpose. (1) The legislature recognizes that the epidemic of human immunodeficiency virus (HIV) infection, the causative agent of acquired immune deficiency syndrome (AIDS), and related medical conditions constitutes a serious danger to the public health and welfare. In the absence of a vaccine or a cure and because of the sexual and intravenous drug use behaviors by which the virus is spread, control of the epidemic is dependent on a voluntary and informed change in behavior of those infected or at risk for infection.

(2) The legislature further recognizes that the necessary access of public health officials to the affected population is impeded not only by the lengthy incubation period of HIV infection that produces a symptomless. therefore hidden, but communicable state of infection, but also by barriers related to the social and legal standing of those at risk. Fears of discriminatory or punitive treatment, coupled with the absence of compelling symptoms, cause many at risk to avoid coming forward to determine their HIV infection status and to learn about ways in which to prevent the spread of the virus.

(3) It is the intent of the legislature to reduce the barriers that have made it difficult to deal with the population at risk for HIV infection. The legislature finds that measures that protect privacy, reduce the likelihood and fear of discrimination and punitive treatment, and provide risk reduction information for persons at risk are necessary in entreating such individuals to come forward to determine their HIV infection status, obtain early treatment, and change behavior that puts them and others at risk of infection.

NEW SECTION. **Section 3.** Definitions. As used in [sections 1 through 7], the following definitions apply:

(1) "AIDS" means acquired immunodeficiency syndrome as

INTRODUCED BILL
SB 437

LC 1408/01

further defined by the board in accordance with standards promulgated by the centers for disease control of the United States public health service.

(2) "Board" means the board of health and environmental sciences provided for in 2-15-2104.

(3) "Contact" means an individual identified by the subject of an HIV-related test as a past or present sexual partner or as a person with whom the subject has shared hypodermic needles or syringes.

(4) "Department" means the department of health and environmental sciences provided for in 2-15-2101.

(5) "HIV" means the human immunodeficiency virus, identified as the causative agent of AIDS, and all HIV and HIV-related viruses that damage the cellular branch of the human immune or neurological systems and leave the infected person immunodeficient or neurologically impaired.

(6) "HIV-related condition" means a chronic disease resulting from infection with HIV, including but not limited to AIDS and asymptomatic seropositivity for HIV.

(7) "HIV-related test" means a laboratory test, including but not limited to an enzyme immunoassay and a western blot, that is designed to detect the presence of HIV or antibodies to HIV.

(8) "Health care facility" means a health care institution, private or public, including but not limited to a hospital, nursing home, clinic, blood bank, blood center, sperm bank, or laboratory.

(9) "Health care provider" means a physician, nurse, paramedic, psychologist, dentist, public health department agent, or other person providing medical, nursing, psychological, or other health care services of any kind.

(10) "Legal guardian" means a person appointed by a court to assume legal authority for another who has been found incapacitated or, in the case of a minor, a person who has legal custody of the minor.

(11) "Person" means an individual, corporation, organization, or other legal entity.

(12) "Pretest counseling" means counseling from a counselor who is certified in HIV-related testing and counseling by the centers for disease control that includes:

(a) an explanation of the nature of HIV infection and the relationship between the HIV-related test results and the disease;

(b) information about behaviors known to pose risks for transmission of HIV infection and aimed at helping the individual understand ways to reduce the risk of HIV infection;

(c) counseling for coping with the emotional consequences of learning the HIV-related test results and referral for further assistance as necessary or desired by

the subject; and

(d) information regarding the importance of notifying contacts in the event of a positive test result.

(13) "Posttest counseling" means counseling, conducted at the time the HIV-related test results are given, that is directed toward increasing the individual's understanding of the HIV infection, changing the individual's behavior, and, if necessary, encouraging the individual to notify or allow notification of any contacts.

(14) "Release of test results" means a written authorization for disclosure of HIV-related test results that is signed and dated and that specifies the nature of the information to be disclosed and to whom disclosure is authorized.

(15) "Written informed consent" means an agreement in writing freely executed by the subject of an HIV-related test or the subject's legal guardian, without undue inducement or any element of compulsion, fraud, deceit, duress, or other form of constraint or coercion, that includes at least the following:

(a) an explanation of the test, including its purpose, potential uses, limitations, and the meaning of its results; and

(b) an explanation of the procedures to be followed for confidentiality, blood drawing, and counseling, including

notification that the test is voluntary, that consent may be withdrawn at any time, and that the law prohibits health care providers from refusing to provide health care services solely because a prospective patient will not undergo an HIV-related test;

(c) a discussion of whether and to whom the subject's name and test results may be disclosed; and

(d) a statement that the test may be obtained anonymously if the subject wishes.

NEW SECTION. **Section 4.** Testing -- counseling -- informed consent -- penalty. (1) A person may not perform an HIV-related test without first receiving the written informed consent of the subject of the test or the subject's legal guardian. A health care provider shall certify in writing that informed consent has been received prior to ordering testing. Testing may only be performed by a health care provider.

(2) Prior to executing an informed consent agreement, the subject of the test or the subject's legal guardian must be given pretest counseling.

(3) A health care provider who does not provide HIV-related tests on an anonymous basis shall refer a person who wishes to be tested anonymously to a test site that does provide anonymous testing.

(4) The results of an HIV-related test must be given to

the subject of the test in person by a health care provider.

(5) At the time the subject of a test is given the test results, the subject must be provided with posttest counseling.

(6) A minor may consent or refuse to consent to be the subject of an HIV-related test, pursuant to 41-1-402.

(7) Subsections (1) through (5) do not apply to:

(a) the performance of an HIV-related test by a health care provider or health care facility that procures, processes, distributes, or uses a human body part donated for a purpose specified under Title 72, chapter 17, if the test is necessary to assure medical acceptability of the gift for the purposes intended;

(b) the performance of an HIV-related test for the purpose of research if the testing is performed in a manner by which the identity of the test subject is not known and may not be retrieved by the researcher.

(8) A knowing or purposeful violation of this section is a misdemeanor punishable by a fine of $1,000 or imprisonment for up to 6 months, or both.

NEW SECTION. **Section 5.** Testing of donors of organs, tissues, and semen required -- penalty. (1) Except as provided in subsection (2), a prospective donor of organs, tissues, or semen shall undergo an HIV-related test.

(2) Testing of a prospective donor of an organ or

tissues is not required if the transplantation of an indispensable organ is necessary to save a patient's life and there is not sufficient time to perform an HIV-related test.

(3) A knowing or purposeful violation of this section is a misdemeanor punishable by a fine of up to $1,000 or imprisonment of up to 6 months, or both.

NEW SECTION. **Section 6.** Confidentiality of records -- penalty. (1) A person may not disclose or be compelled to disclose the identity of a subject of an HIV-related test or the results of a test in a manner that permits identification of the subject of the test, except to the following persons:

(a) the subject of the test or the subject's legal guardian;

(b) a person who secures a written release of test results executed by the subject of the test or the subject's legal guardian;

(c) a person to whom the subject of the test or the subject's legal guardian has authorized disclosure in writing;

(d) a person whose notification is authorized under subsection (2), except that only the test results may be disclosed, not the identity of the subject of the test;

(e) a minor's parent, custodian, or guardian pursuant

to 41-1-403;

(f) the subject's spouse;

(g) the department or the centers for disease control of the United States public health service in accordance with state and federal reporting requirements for a diagnosed case of AIDS or another HIV-related condition; or

(h) a health care facility or health care provider that procures, processes, distributes, or uses:

(i) a human body part from a deceased person pursuant to Title 72, chapter 17, with respect to medical information regarding that person; or

(ii) semen for the purpose of artificial insemination.

(2) If a health care provider informs the subject of an HIV-related test that the results are positive, the provider shall encourage the subject to notify persons with whom there has been a contact capable of spreading HIV. If the subject is unable or unwilling to notify all contacts, the health care provider may ask the subject to disclose voluntarily the identities of the contacts and to authorize notification of those contacts by a health care provider. The health care provider shall inform the subject that he is under no legal obligation either to disclose names of contacts or to authorize their notification. A notification may state only that the contact may have been exposed to HIV and may not include the time or place of possible exposure

or the identity of the subject of the test.

(3) A violation of this section is a misdemeanor punishable by a fine of up to $50,000 or imprisonment in a county jail for up to 1 year, or both.

NEW SECTION. **Section 7.** Civil remedy. (1) A person aggrieved by a violation of [sections 1 through 7] has a right of action in the district court and may recover for each violation:

(a) against a person who negligently violates a provision of [sections 1 through 7], damages of $1,000 or actual damages, whichever is greater;

(b) against a person who intentionally or recklessly violates a provision of [sections 1 through 7], damages of $5,000 or actual damages, whichever is greater;

(c) reasonable attorney fees; and

(d) other appropriate relief, including injunctive relief.

(2) An action under this section must be commenced within 3 years after the cause of action accrues.

(3) The attorney general may maintain a civil action to enforce [sections 1 through 7] in which the court may order any relief permitted under subsection (1).

(4) Nothing in this section limits the rights of a subject of an HIV-related test to recover damages or other relief under any other applicable law or cause of action.

(5) Nothing in [sections 1 through 7] may be construed to impose civil liability or criminal sanctions for disclosure of an HIV-related test result in accordance with any reporting requirement for a diagnosed case of AIDS or an HIV-related condition by the department or the centers for disease control of the United States public health service.

Section 8. Section 50-16-529, MCA, is amended to read:

"50-16-529. Disclosure without patient's authorization based on need to know. A Except as provided in [section 6], a health care provider may disclose health care information about a patient without the patient's authorization, to the extent a recipient needs to know the information, if the disclosure is:

(1) to a person who is providing health care to the patient;

(2) to any other person who requires health care information for health care education; to provide planning, quality assurance, peer review, or administrative, legal, financial, or actuarial services to the health care provider; or for assisting the health care provider in the delivery of health care and if the health care provider reasonably believes that the person will:

(a) not use or disclose the health care information for any other purpose; and

(b) take appropriate steps to protect the health care

information;

(3) to any other health care provider who has previously provided health care to the patient, to the extent necessary to provide health care to the patient, unless the patient has instructed the health care provider not to make the disclosure;

(4) to immediate family members of the patient or any other individual with whom the patient is known to have a close personal relationship, if made in accordance with the laws of the state and good medical or other professional practice, unless the patient has instructed the health care provider not to make the disclosure;

(5) to a health care provider who is the successor in interest to the health care provider maintaining the health care information;

(6) for use in a research project that an institutional review board has determined:

(a) is of sufficient importance to outweigh the intrusion into the privacy of the patient that would result from the disclosure;

(b) is impracticable without the use or disclosure of the health care information in individually identifiable form;

(c) contains reasonable safeguards to protect the information from improper disclosure;

(d) contains reasonable safeguards to protect against directly or indirectly identifying any patient in any report of the research project; and

(e) contains procedures to remove or destroy at the earliest opportunity, consistent with the purposes of the project, information that would enable the patient to be identified, unless an institutional review board authorizes retention of identifying information for purposes of another research project;

(7) to a person who obtains information for purposes of an audit, if that person agrees in writing to:

(a) remove or destroy, at the earliest opportunity consistent with the purpose of the audit, information that would enable the patient to be identified; and

(b) not disclose the information further, except to accomplish the audit or to report unlawful or improper conduct involving fraud in payment for health care by a health care provider or patient or other unlawful conduct by a health care provider; and

(8) to an official of a penal or other custodial institution in which the patient is detained."

Section 9. Section 50-16-530, MCA, is amended to read:

"50-16-530. Disclosure without patient's authorization -- other bases. A Except as provided in [section 6], a health care provider may disclose health care information

about a patient without the patient's authorization if the disclosure is:

(1) directory information, unless the patient has instructed the health care provider not to make the disclosure;

(2) to federal, state, or local public health authorities, to the extent the health care provider is required by law to report health care information or when needed to protect the public health;

(3) to federal, state, or local law enforcement authorities to the extent required by law;

(4) to a law enforcement officer about the general physical condition of a patient being treated in a health care facility if the patient was injured on a public roadway or was injured by the possible criminal act of another; or

(5) pursuant to compulsory process in accordance with 50-16-535 and 50-16-536."

NEW SECTION. **Section 10.** Extension of authority. Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

-End-

Closing by Sponsor: Senator Judy Jacobson stated that they have been working with a committee for the last four years. She stated she would recommend the bill. She pointed out that there were no opponents today, and previously there were quite a few. She stated the amendment to the Statement of Intent has to do with the sunrise provision. She wished to clarify that they are not licensing people, so they do not feel that there is a problem there. She believes the other amendments are necessary.

DISPOSITION OF SENATE BILL 407

Discussion: Senators Hager and Jacobson briefly explained the purpose and intent of the amendments.

Amendments and Votes: Senator Norman made a motion that THE AMENDMENTS BE ADOPTED. Senators in favor, 7; opposed,0.

Recommendation and Vote: Senator Himsl made a motion that SENATE BILL 407 DO PASS AS AMENDED. Senators in favor, 7; opposed, 0.

HEARING ON SENATE BILL 437

Presentation and Opening Statement by Sponsor: Senator Bill Norman, Senate District #28, advised that this is a bill relating to aids, which is an infectious disease. However, he stated there is much more involved - money, social aspects, moral aspects, emotion, prejudice and ignorance. He stated this bill does two things (1) it relates to HIV testing, and also (2) relates to confidentiality. Medical personnel on all levels are involved in this issue, as are insurance companies, public agencies, courts and patients who may be adults or infants. He stated there are extensive amendments, and he gave a hypothetical example of the various situations that could be encountered.

List of Testifying Proponents and What Group they Represent:

Jack McMahon, M.D., Chairman, Montana Medical Association Legislative Committee
Ellen Leahy, Acting Health Officer, Missoula Health Department
John Ortwein, Montana Catholic Conference
Neil Egan, Helena Aids Support Network
Linda Henderson, R.N., Montana Nurses' Association

Bob Johnson, President, Montana Health Association
Mary Beth Frederes, Montana Aids Coalition
Tom Hopgood, Health Insurance Companies of America
Bonnie Leifer, Missoula Aids Council
Tim Harris, Self
Woody Wright, Self
Brenda Nordlund, Montana Women's Lobby
Brenda Desmond, Self
Larry Akey, Montana Health Network, Montana Association of Life Underwriters
Joanne Scherer, Self
Bill McDonald, Missoula City-County Board of Health, submitted written testimony (Exhibit #23)
Julie A. H. Beckel, R.N., CEAP, submitted written testimony (Exhibit #24)
Anne M. Murphy, M.D., Western Montana Clinic, submitted written testimony (Exhibit #25)

List of Testifying Opponents and What Group They Represent:

Roger Tippy, Montana Dental Association
Bryan Asay, Montana Family Coalition
Rose Hughes, Montana Health Association
Patty Carrell, Pro-Family Women's Lobby, submitted written testimony (Exhibit #26)

Testimony:

Dr. Jack McMahon advised that his group supports this bill as amended since they think the bill does everything that should and can be done at this time. He urged that it be given a do pass as amended recommendation by the committee.

Ellen Leahy stated she is testifying in support of SB 437, including amendments. She read and submitted her written testimony to the committee (Exhibit #15).

John Ortwein, of the Montana Catholic Conference, urged the committee's support of SB 437. He read and furnished his written testimony to the committee (Exhibit #16).

Neil Egan stated he represented the Helena Aids Support Network which is a diverse group of volunteers working with persons who are HIV positive, their families and loved ones. He stated their group wholeheartedly supports SB 437.

Linda Henderson, R.N., stated she represents the Montana Nurses Association, and is speaking in support of SB 437, with amendments. She stated that counseling with testing is the only means available to control spread

of the HIV virus. The MNA believes this legislation is necessary, and it would help provide the knowledge people need to protect themselves. She urged support of SB 437.

Bob Johnson, President of Montana Health Association, stated they are in support of this bill, with amendments. He stated it represents hundreds of hours of meetings and many compromises before it reached its final form. He stated there is broad based support, and his association urges passage of SB 437.

Mary Beth Frederes, Montana Aids Coalition, stated theirs is an organization made up of individuals from across the state. The Coalition supports this bill. She stated that information is the only weapon, and every opportunity to present the message must be taken, and people encouraged to use preventive measures and testing. She urged passage of this bill.

Tom Hopgood, Health Insurance Companies of America, stated he is a proponent of SB 437. He stated he would like to study the amendments, and may have a further suggestion at the Executive Session.

Bonnie Leifer, Coordinator of the Missoula Aids Council, stated she is in support of this bill.

Tim Harris, Montana Independent Living Project, stated he works with people who have need for counseling and confidentiality. He said he very strongly supports those portions of the bill.

Woody Wright stated he is appearing as a parent and urged support of SB 437. He stated he is not sure that is all that is needed, but it will be a benefit. He stated he supported the amendments as well.

Brenda Nordlund, Montana Women's Lobby, stated that agreement had been reached on the amendments. She reviewed and explained each amendment, which are attached. (Exhibit #17). She urged the committee's support.

Brenda Desmond stated she teaches at Montana University Law School but she is representing herself. She urged passage of SB 437.

Larry Akey, representing Montana Association of Life Underwriters and Montana Health Network, advised that with the amendments as proposed they believe a workable bill is in sight. However, they still have some

concerns. They recognize the importance of aids education and urged the committee to keep this bill alive as a vehicle to future compromise.

Joanne Shearer, a Helena homemaker who is representing herself, stated she is also a member of the Aids Task Force. She stated she has not had time to review the amendments. She had planned to oppose the bill and her prepared testimony was in opposition. However, with the amendments she feels she could support the bill, although she has some concerns. She advised the Informed Consent Law in Illinois has been struck down because it did not serve anyone's best interest and actually impeded the physician, and Florida is considering doing likewise. According to Ms. Shearer, these two states are among the highest in number of aids cases. Another area of concern regards who needs to be informed. It lists the subject's spouse but does not address a live-in lover or anyone known to be sexually intimate with the person identified as positive. She feels that should be addressed. She mentioned the recent Rock Hudson case where there was a multi-million dollar award involved and she believes that case will set a precedent that people who have diseases such as aids are under moral and legal obligation to reveal the nature of contact. She believes such persons should be informed that they could be sued if they do not reveal names of their contacts. She does not believe that this legislation addresses who should be tested and what the mandate should be in identifying those people that are high risk. She presented her written testimony which sets forth further concerns and suggestions for addressing them. (Exhibit #18)

Roger Tippy, representing the Montana Dental Association, stated that he is opposed to two and one-half sections of the bill. Approximately 450 dentists of this state and their auxiliary personnel come into contact with human bodily fluids, mainly saliva but sometimes blood, more frequently than most health professionals that operate outside a hospital. They are keenly interested in aids legislation of this nature. He stated that Mr. Johnson said there had been a great deal of outreach and discussion, but he believed the Dental Association was overlooked. The concern is that the confidentiality section does not appear to allow disclosure to another health care provider who is currently treating the individual as a patient. The Dentist is entitled as another provider under the Uniform Health Care Information Act. He stated he would submit written information on this issue which

was furnished by the American Dental Association. He read a portion of the information and submitted it to the committee. (Exhibit #19). He also proposed an amendment which would strike Sections 8 and 9 in their entirety, and portions of pages 8 and 9. He furnished the amendment to Tom Gomez.

Bryan Asay, Montana Family Coalition, stated he understands the amendments are very comprehensive but he had not had a chance to review them to see if they would address the concerns of the Coalition. He expressed concern that there is a prevalent attitude that this is a civil rights issue rather than a public health issue, and he asked the committee to treat it as a public health matter. He reiterated that because he did not know what the amendments provide, he is not sure if he is a proponent or an opponent. He submitted written testimony for the committee's consideration. (Exhibit #20).

Rose Hughes, Montana Health Care Association, stated that their concerns are basically the same as expressed by Roger Tippy of the Dental Association. They are concerned about treating health care information that has to do with aids differently from how you treat other health care information. When the Uniform Health Information Act was adopted, the object was to have a uniform way to deal with confidential medical information and medical records so that everyone would know to whom information could be released and under what circumstances. There were provisions under that act for releasing information to people who had a need to know who were providing services to a given patient. Her group believes the Uniform Health Information Act should not be put aside in this bill.

Questions from Committee Members:

Senator Rasmussen asked Senator Norman if aids is being treated differently, as the last two speakers indicated. Senator Norman responded by stating that it is being treated differently, but work is being done in the direction that aids will not be treated differently. However, he feels it will take time before this is realized.

Senator Rasmussen then asked if in the case of syphilis, others have to be informed, why does this bill change that for aids.

Senator Norman advised that there should be an understanding between the doctor and the patient before a test is

given what should be done with the information. He believes the bill is trying to provide informed consent.

Senator Rasmussen pointed out a section which states the provider shall encourage the subject to notify persons with whom they have been in contact. He asked if in the case of syphilis would the doctor just "encourage" or does the law say he must inform.

Dr. McMahon stated syphilis, as well as aids, is a reportable disease. Positive aids tests must be reported to the State Health Department. The Department then contacts that patient and they go through the process of identifying contacts. This is not peculiar to aids - every venereal disease is handled in this manner.

Ellen Leahy, Missoula Health Department, stated they always encourage the infected person to inform or give the department the names to inform. That language also comes from the Center of Disease Control. Dr. Rasmussen asked if she felt that language was strong enough to enable the health department to do that, and she stated that in all practicality they can do nothing more than "strongly encourage".

Closing by Sponsor: Senator Norman stated that Mr. Tippy will probably not be surprised to find that his amendments will not be considered at this time. However, they will be considered before the bill appears on the Senate floor, and if the matter is not resolved at that time, he could present them to the House. He stated that informed consent has been addressed and it is the intent of the bill and the amendments to treat this as any other reportable disease.

DISPOSITION OF SENATE BILL 437

Discussion: Senator Hager stated that one of the frustrations of Legislature is that some bill does have to be last. He stated much work went into this bill and there are many amendments to consider, and possibly more. It must be decided if this is a good enough package to send down the road. Senator Pipinich added that it is a start.

Amendments and Votes: Senator Norman made the motion that AMENDMENTS 1 THROUGH 13 BE ADOPTED. Senators in favor, 7; opposed, 0.

Recommendation and Vote: Senator Norman made the motion that SENATE BILL 437 DO PASS AS AMENDED. Senators in favor, 7; opposed, 0.

ADJOURNMENT

Adjournment At: 3:00 p.m.

SENATOR TOM HAGER, Chairman

TH/dq

senmindq.217

ROLL CALL

PUBLIC HEALTH COMMITTEE

51st LEGISLATIVE SESSION -- 1989 Date 2/17/89

NAME	PRESENT	ABSENT	EXCUSED
Sen. Tom Hager	X		
Sen. Tom Rasmussen	X		
Sen. Lynch	X		
Sen. Himsl	X		
Sen. Norman	X		
Sen. McLane	X		
Sen. Pipinich	X		

Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT

February 17, 1989

MR. PRESIDENT:

We, your committee on Public Health, Welfare, and Safety, having had under consideration SB 437 (first reading copy -- white), respectfully report that SB 437 be amended and as so amended do pass:

(See attached)

AND AS AMENDED DO PASS

Signed: _____

Thomas O. Hager, Chairman

SB0437.217

MISSOULA CITY-COUNTY HEALTH DEPARTMENT

SENATE HEALTH & WELFARE
EXHIBIT NO. 15
DATE 2/17/89
BILL NO. SB 437

February 16, 1989

Senator Tom Hager, Chairman
Public Health Committee
Montana State Senate
Capitol Building
Helena, MT 59620

Dear Senator Hager,

I am writing in support of SB 437, the AIDS Prevention Act.

As a local public health official, I am responsible for the control of communicable disease. Control of the spread of HIV, the virus that causes AIDS, is particularly difficult as we have no vaccine or cure available. We do, however, have the opportunity to provide education directly to persons infected and at risk of infection when they present for HIV antibody testing. In fact, the practice of counseling and testing is the cornerstone of AIDS prevention activities.

In our function as one of the state's Counseling and Testing Sites, our department provides testing only in conjunction with counseling. SB 437 could extend this communicable disease control measure to persons who present for testing somewhere other than Counseling and Testing Sites as about 60 percent of test subjects do in this state.

I strongly urge your committee to promote one of the few communicable disease control methods we have available to us for the control of AIDS and favorably recommend SB 437 for passage. Thank you for your consideration of this testimony.

Sincerely,

Ellen Leahy

Ellen Leahy, R.N., M.N.
Acting Health Officer

301 W ALDER MISSOULA, MT 59802 (406) 721-5700

Montana Catholic Conference

SENATE HEALTH & WELFARE
EXHIBIT NO. #16
DATE 2/17/89
BILL NO #437

February 17, 1989

CHAIRMAN HAGER AND MEMBERS OF THE PUBLIC HEALTH COMMITTEE

I am John Ortwein representing the Montana Catholic Conference.

Because of the virtually epidemic proportions of AIDS, we acknowledge the need for cooperative efforts by private and public entities to discover ways to treat and cure this disease and to commit adequate resources for basic research, applied research and general education.

All of us have the responsibility and obligation to ensure that persons with AIDS and their families are cared for compassionately. Most certainly persons with AIDS, their families and their friends need solidarity, comfort, and support. We believe that the best approach to the prevention of AIDS ought to be based on the communication of a value-centered understanding of the meaning of human personhood. The pretest and posttest counseling afford the opportunity to deal with the personhood of each person afflicted with the AIDS virus.

The Montana Catholic Conference urges your support of SB 437.

Tel. (406) 442-5761 P.O. BOX 1708 530 N. EWING HELENA, MONTANA 59624

SENATE HEALTH & WELFARE
EXHIBIT NO. 17
DATE 2/17/89
BILL NO. SB 437

Amendments to SB 437
Proposed by Senator Norman

1. Page 1, Ln. 24, insert the word "predominantly" between "is" and "spread".

2. Page 1, ln 25, to page 2, ln 1, strike the remainder of the sentence beginning with the phrase "a voluntary and informed change . . .", and insert the following:

"the education of those infected and at risk for infection."

3. Page 2, ln. 2-22, strike subsections (2) and (3) of Section 2, and insert the following:

"It is the intent of the legistature that education directed at preventing the transmission of HIV be provided to those infected and at risk of infection and to entreat such persons to come forward to determine their HIV infection status and to obtain appropriate education."

4. Page 4, ln. 13-25, through page 5, ln. 1-3, strike as written and replace with the following:

"(12) "Pretest counselling" means the provision of written materials to the subject prior to conduct of a HIV test. The written materials shall be developed and provided by the department."

5. Page 5, ln. 4-9, strike the remainder of the subsection beginning with the phrase "that is directed toward increasing . . .", and insert the following:

"and includes written materials provided by the department."

6. Page 5, ln. 17-19, strike "without undue inducement or any element of compulsion, fraud, deceit, duress, or other form of constraint or coercion,".

7. Page 6, ln. 1, insert the word "and" between "voluntary," and "that consent", and delete the following phrase: "and that the law prohibits health care providers from refusing to provide health care services solely because a prospective patient will not undergo an HIV-related test".

8. Page 6, insert the following sentence below subsection (d):

"The department must develop a form agreement that may be used for purposes of this subsection."

SB437
#17

9. Page 6, ln. 11, delete the word "perform" and insert the word "request", and on ln. 16, replace "ordering" with "requesting" and replace "performed" with requested".

10. Page 6, ln. 22, delete the word "refer" and insert the word "inform", and on ln. 23-24, delete the remainder of the sentence, beginning with the "to a test site that . . . " and insert:

> "that anonymous testing is avialable at one of the "Counseling and Testing Sites" established by the department."

11. Page 6, ln. 25, through page 7, ln. 1, delete the sentence and insert:

> "The results of the test must be given to the health care provider designated by the subject, who shall inform the subject of the results in person."

12. Page 9, ln. 21-23, delete the sentence beginning, "The health care provider shall . . ."

13. Page 10, ln 2-4, are to be deleted.

SENATE HEALTH & WELFARE
EXHIBIT NO. #18
DATE 2/17/87
BILL NO. SB 437

TESTIMONY ON SB 437
BY JOANNE SHEARER

I OPPOSE SB 437 BECAUSE IT IS OUT OF BALANCE IN ITS PROTECTION OF THE RIGHTS OF THOSE INVECTED WITH HIV WHILE LEAVING THE GENERAL PUBLIC AT RISK. SB 437 DOES NOT ADDRESS THE NEED FOR WIDESPREAD TESTING TO DETERMINE WHO IS INFECTED WITH HIV AND THE ROLE OF AGGRESSIVE BUT ACCURATE EDUCATION IN FIGHTING AIDS. FOR EXAMPLE, SB 437 DOES NOT ADDRESS THE NEED FOR TESTING OF THOSE ARRESTED FOR DRUG ABUSE AND FOR PROSTITUTION.

I WOULD LIKE TO OUTLINE WHAT I BELIEVE TO BE THE COMPONENTS OF A RATIONAL AIDS POLICY:

1. A COMPASSIONATE RESPONSE TO HIV INFECTED PERSONS AND THEIR FAMILIES.

2. EARLY DIAGNOSIS AND TREATMENT OF AIDS SINCE THE SOONER AIDS IS DIAGNOSED, THE MORE EFFECTIVE IN TREATMENT WITH AZT AND IN TREATING OPPORTUNISTIC INFECTIONS AND IN PROLONGING LIFE.

3. WIDESPREAD TESTING SHOULD BE INSTITUED WITH FOLLOW UP OF PARTNER IDENTIFICATION FOR THOSE TESTING POSITIVE. BESIDES HOMOSEXUALS AND IV DRUG USERS, OTHERS WHO NEED TO BE ENCOURAGED TO HAVE AN HIV TEST ARE.

A. THOSE SEEKING TREATMENT FOR A SEXUALLY TRANSMITTED DISEASE.

B. WOMEN WHO ARE CONSIDERING BECOMING PREGNANT AND THEIR SPOUSES.

C. THOSE WHO HAVE HAD MULTIPLE SEX PARTNERS IN THE LAST 5 YEARS.

4. MANDATORY PREMARITAL TESTING SHOULD BE DONE WHEN 1/10 OF 1% OF THE POPULATION BECOMES INFECTED WITH HIV.

5. PRE-HOSPITAL ADMISSION TESTING SHOULD BE DONE ON ALL PATIENTS BETWEEN THE AGES OF 15 AND 50 TO ENABLE THE PHYSICIAN TO PROVIDE OPTIMAL CARE. IF A PERSON TESTS HIV POSITIVE THEN THE PHYSICIAN CAN PRESCRIBE MEDICATION AND A TREATMENT PLAN AIMED AT REDUCING OPPORTUNISTIC INFECTIONS.

6. MANDATORY TESTING OF THOSE ARRESTED FOR DRUG ABUSE OR PROSTITUTION.

7. A STATEWIDE AIDS COMMISSION COMPRISED OF VOLUNTEERS FROM THE PRIVATE AND PUBLIC SECTOR TO ADVISE THE GOVERNOR AND THE LEGISLATURE ON AIDS POLICY.

8. TESTING OF PRISONERS ONLY IF THE STATE PLANS TO USE THE INFORMATION.

THE LAST INGREDIENT OF A RATIONAL AIDS POLICY FOR MONTANA IS AGGRESSIVE ACCURATE EDUCATION AS EDUCATION AND EARLY DIAGNOSIS ARE OUR BEST PREVENTIVE MEASURES IN FIGHTING AIDS. WHEN CONDOM EDUCATION IS PROVIDED, THE RISKS ASSOCIATED WITH CONDOM USE IN HIV INFECTION MUST BE PROVIDED AS WELL. THERE'S CURRENTLY NOT ONE SINGLE SCIENTIFIC STUDY THAT DOCUMENTS THE EFFECTIVENESS OF CONDOMS IN PREVENTING HIV INFECTION. IN FACT, LAST SUMMER THE GOVERNMENT CALLED OFF A 2.6 MILLION DOLLAR CONDOM STUDY IN SAN FRANCISCO WITH HOMOSEXUEL MEN SINCE THE TEST SUBJECTS WERE BEING PLACED AT A HIGH RISK OF AIDS INFECTION DUE TO BREAKAGE AND SLIPPAGE OF THE CONDOMS. THE PUBLIC HEALTH SERVICE HAS STATED THAT CONDOMS ARE ONLY 70-90 PERCENT EFFECTIVE AGAINST AIDS WHEN A PERSON ENGAGES IN PROMISCUOUS SEX. PEOPLE NEED TO KNOW THE FACTS ABOUT THE RISKS OF CONDOM USE AND NOT BE GIVEN A SENSE OF FALSE SECURITY.

EDUCATION PROGRAMS NEED TO STRESS REDUCTION OF HIGH RISK BEHAVIORS AS THE BEST PREVENTION AGAINST AIDS. THE BEST MEDICAL ADVICE THAT THE PUBLIC NEEDS TO HEAR IS THIS: TO AVOID GETTING INFECTED WITH THE AIDS VIRUS, YOU MUST BE IN A BI-DIRECTIONAL, MONOGAMUS, MUTUALLY FAITHFUL RELATIONSHIP - IN OTHER WORDS - A LONG TERM SEXUAL RELATIONSHIP WITH ONE PERSON OF THE OPPOSITE SEX. IN PUBLIC SCHOOLS, SEX EDUCATION CLASSES SHOULD EMPHASIZE SEXUAL ABSTINENCE BEFORE MARRIAGE AS THE PRIMARY MEANS OF PREVENTING HIV INFECTION. JUST AS KIDS ARE TAUGHT TO SAY NO TO DRUGS AND ALCOHOL AN INTENSIVE CAMPAIGN WITH COOPERATION OF SCHOOL, CHURCH AND HOME NEEDS TO BE UNDERTAKEN TO TEACH KIDS TO SAY NO TO PROMISCUOUS SEX.

WHAT WE NEED TO FIGHT THE AIDS EPIDEMIC IN MONTANA IS NOT PANIC OR HYSTERIA BUT A COMMON SENSE APPROACH TO CURBING THE SPREAD OF THIS DISEASE. PLEASE VOTE NO ON SB 437.

American
Dental
Association

211 East Chicago Avenue
Chicago, Illinois 60611-2678
(312) 440-2500

ADA

SENATE HEALTH & WELFARE
EXHIBIT NO. 11
DATE 2/17/89
BILL NO. SB 437

February 16, 1989

Mr. Ed Kozelek
Director of Governmental Affairs
Ohio Dental Association
1370 Dublin Road
Columbus, Ohio 43215-1009

Dear Ed:

Enclosed are excerpts from 1988 laws that permit disclosure of HIV information to health care providers in certain circumstances. Thirteen states are represented (California enacted two laws on the subject). I believe I omitted New York from the count when we spoke last week.

We have contacted three other organizations looking for informtaion on confidentiality/disclosure laws in all 50 states without success so far. I'll keep you informed.

This is, probably the best argument that can be made from the information available:

The states appear to have reached a consensus that dentists and other treating health care professionals should have access to all pertinent information about their patients' health, including their HIV status. States that have adopted special confidentiality protection for AIDS/HIV information, have overwhelmingly included disclosure to health care professionals among the enumerated exceptions.

Since the ADA Department of State Government Affairs began tracking AIDS-related legislation in 1987, the pass rate for disclosure bills has risen from 50% to over 75%. In 1987, bills to permit disclosure to health care professionals were introduced in four states. They were enacted in two. In 1988, disclosure bills were introduced in 18 states and enacted in 13. Four failed and one bill carried over to 1989.

One of the thirteen states that authorized disclosure was California whose AIDS/HIV confidentiality law was considered the strictest in the nation. The California law now permits disclosure of HIV test results to the test subject's "providers of health care... for purposes of diagnosis, care or treatment."

Telex: 247642 (ADA/UR)
Telecopier: (312) 440-7494

A disclosure provision is part of the Uniform Health Care Information Act adopted by Alabama and Montana. Section 2-104 of the Act permits disclosure of any health care information, including HIV information, without the patient's authoriziation on a need-to-know basis to his or her health care provider.

Disclosure laws permit consultation among treating health care professionals. They permit professionals to share information necessary for proper diagnosis and treatment of their patients. For these reasons, disclosure to treating health care professionals is increasingly recognized as a necessary exception to AIDS/HIV confidentiality laws.

Sincerely,

Kathleen Todd
Assistant Director
State Government Affairs

KT:lb
enclosures

EXHIBIT NO. 7
DATE 2/17/89
BILL NO. SB 437

TESTIMONY IN OPPOSITION OF SB 437

Bryan Asay, Mt. Family Coalition

The Montana Family Coalition opposes SB 437 because this legislation approaches AIDS as a civil rights issue rather than a medical and public health issue. To combat AIDS we need a temperate and reasonable approach that promotes tried and true traditional public health methods that have been used for other sexually transmitted diseases.

This legislation assumes that if people are provided privacy and confidentiality of their AIDS status that more people will come forward to be tested. In states where confidentiality laws have been enacted, there has been no rush for people to come forward for testing. This is because denial of infection is the main reason high risk groups are not volunteering to be tested and not because they fear disclosure of the test results. In New York City a study was conducted on drug abusers on therapy. They were asked the reasons they had not voluntarily submitted to an HIV test since they fell into the high risk category. Twenty percent stated that they did not want to know, 46% stated "I don't think I've been exposed to HIV" and only 9% stated they were afraid the information would not be kept confidential. Yet we are basing this law on the premise that people will come forward to be tested if we have confidentiality and rights to privacy.

The section of this bill penalizing physicians should be deleted since the doctor seldom breaks the patient's confidence. Where confidence is broken it is broken by family members or former lovers, not Doctors. In California, laws penalizing physicians for breaking confidence have been overturned since they were not in anyone's best interest. The confidentiality and rights to privacy section of this law prohibits the practice of medicine to benefit the patient.

Our best line of defense against discrimination and punitive treatment of AIDS sufferers is intensive public education that informs people of the routes of transmission of the AIDS virus. Once employers understand that AIDS cannot be transmitted through casual contact in the workplace, they have no fear of continued employment of an HIV positive employee. Ignorance of AIDS fosters fear, which fosters discrimination. Confidentiality laws and right to privacy laws will not stop discrimination against AIDS patients.

MISSOULA CITY-COUNTY HEALTH DEPARTMENT

February 16, 1989

SENATE HEALTH & WELFARE
EXHIBIT NO. #23
DATE 2/17/89
BILL NO. SB 437

Senator Tom Hager, Chairman
Public Health Committee
Montana State Senate
Capitol Building
Helena, MT 59620

Dear Senator Hager,

On behalf of the Missoula City-County Board of Health, I am writing in support of SB 437, "The AIDS Prevention Act." Our local health department is one of the state's nine Counseling and Testing Sites established by the Centers for Disease Control through the Montana Department of Health and Environmental Sciences. Our institution conducts HIV antibody testing and counseling in a manner consistent with to the provisions in SB 437 and, for purposes of communicable disease control, endorses the promulgation of these provisions for all HIV antibody testing conducted in the state.

Control of communicable disease is an extremely important health department responsibility that, in relation to AIDS and HIV infection, is particularly difficult. In the absence of a vaccine or cure for this disease, public health officials must rely heavily on education to prevent its spread. Because persons presenting for HIV antibody testing furnish an invaluable opportunity to provide this necessary education and because the test, when performed without counseling is severely limited in its usefulness, this department offers HIV antibody testing only in conjunction with adequate counseling.

I strongly urge your committee to favorably recommend SB 437 for passage.

Sincerely,

Bill McDonald, Chairman

301 W. ALDER MISSOULA, MT 59802 (406) 721-5700

Drawer 7
Bonner, Montana 59823
406 258-5511

SENATE HEALTH & WELFARE
EXHIBIT NO. #24
DATE 2/17/89
BILL NO. SB 437

Champion
Champion International Corporation

February 16, 1989

Senator Tom Hager
Chairperson - Public Health Committee

Dear Senator:

I am writing to urge your support for Senate Bill #437. We need uniform standards on Aids testing and counseling. We need to bring all testing centers to standards. I request this of you not only as a health professional but also as a concerned parent.

Thank you in advance for your time and I would appreciate your support.

Sincerely,

Julie A. H. Beckel

Julie A. H. Beckel, RN, CEAP
Occupational Health Nurse
EAP Coordinator

JB:md

THE WESTERN MONTANA CLINIC

515 WEST FRONT STREET
MISSOULA, MONTANA
59802

TELEPHONE (406) 721-5600

INTERNAL MEDICINE
CARDIOLOGY
G.A. DIETTERT, M.D.
JOSEPH E. KNAPP, JR., M.D.
MARK SANZ, M.D.
DIAGNOSTIC
T.H. ROBERTS, M.D.
MARY C. LANGENDERFER, M.D.
A.M. MURPHY, M.D.
H.E. HUGHSON, M.D.
W.W. WILSON, M.D., F.A.C.P.
BETH E. THOMPSON, M.D.
G.F. WALTER, M.D.
J.F. DAVIS, M.D.
ENDOCRINOLOGY
W.A. REYNOLDS, M.D., F.A.C.P.
GASTROENTEROLOGY
R.G. MURNEY, JR., M.D.
HEMATOLOGY—ONCOLOGY
J.M. TRAUSCHT, M.D.
NEPHROLOGY
J.H. REITER, M.D.
PULMONOLOGY
W.B. BEKEMEYER, M.D.
RHEUMATOLOGY
H.W. BUSEY, M.D.
K. FREMONT SMITH, M.D.
RHEUMATOLOGY
ADULT AND PEDIATRIC
F. SCHLESINGER, M.D.
NEUROLOGY
ADULT AND PEDIATRIC
S.F. JOHNSON, M.D.
ETHAN P. RUSSO, M.D.
PEDIATRICS
INFANTS, CHILDREN, ADOLESCENTS
C.E. BELL, M.D.
S. WERNER, M.D.
K.S. ROGERS, M.D.
BRUCE G. HARDY, M.D.
SURGERY
D.H. FARNHAM, M.D., F.A.C.S.
P.C. NATURALE, M.D.
GEORGE C. ROTH, JR., M.D.
OBSTETRICS AND GYNECOLOGY
INFERTILITY
D.S. SOHLBERG, M.D.
L.A. RICHARDS, M.D.
VALERIE A. KNUDSEN, M.D.
KRISTIN A. RAUCH, M.D.
OTOLARYNGOLOGY
B.T. MORRIS, M.D.
DERMATOLOGY
P.E. WATSON, M.D.
UROLOGY
R.S. MUNRO, M.D., F.A.C.S.
ORTHOPAEDIC SURGERY
L.J. TODER, M.D.
D.L. WOOLLEY, M.D.
RADIOLOGY
G.E. GRAY, M.D.
G.T. NIEN, M.D.
CLINICAL PSYCHOLOGY
E.J. BACH, Ph.D.
C.L. MILLER, Ph.D.
PODIATRIC MEDICINE
N.R. WILLIAMS, D.P.M.
H.M. ROBBINS, D.P.M., Ph.D.
LOLO FAMILY PRACTICE
N.F. VASQUEZ, M.D.
JUDITH VISSCHER, M.D.
SOUTHGATE MALL NOW CARE
R.W. SWEATMAN, M.D.
M.S. WOLTANSKI, M.D.
ADMINISTRATION
GARY J. LARSON

February 17, 1989

SENATE HEALTH & WELFARE
EXHIBIT NO. #25
DATE 2/17/89
BILL NO. SB 437

Health Services Committee
Of The Montana State Senate
Helena, MT 59601

Dear Committee Members:

I wish to write in support of Senate Bill 437, Sections 1-5 and to suggest a clarification of Section 6.

I have been in the practice of general internal medicine for seven years in Missoula and have a number of patients with HIV-related disease whom I see regularly. I am well acquainted with the difficulties that this disease presents to not only infected individuals but also their families, loved ones, and to the community at large.

With regard to pre and post test counselling, I strongly support the Senate Bill 437, Sections 2 and 4 as written. The degree of irrationality and ignorance surrounding this disease is immense. This results not only in unnecessary fear on the part of low risk individuals, but also results in inadequate screening on the part of high risk individuals. Only through effective and responsible counselling as outlined in Section 4, can this irrationality and ignorance be dealt with.

I would also like to strongly support that confidentiality of HIV testing results be given a high priority. I must ask, however, for clarification of Section 6. Without confidentiality, those at high risk of HIV infection, including homosexual males, IV drug abusers, prostitutes and those receiving blood transfusions prior to 1982, cannot be expected to come forward in the current environment of fear, ignorance and discrimination. If confidentiality of testing can be assured to a reasonable extent, then it is much more likely that those at high risk who need to be screened and counselled regarding further spread of the disease will come forward.

I would like to clarify, however, that the disclosure of identity of HIV positive persons by a health care worker to another health care worker who is responsible for providing health care to the patient must clearly be allowed without any fear of fine. I believe that Section 9, attached to the copy

of the Bill I have does allow for health care workers providing care to the patient to know the patient's HIV positive status. If it does not, however, I would strongly recommend that this be the case. It appears that Section 6 does not allow free transmission of information between health care workers, but that Section 9 does allow this. I believe it would neither be fair nor ethical, nor in the HIV infected patient's best interest for health care workers involved in the care of that person to not know the patient's HIV status.

Thank you for your consideration. Please let me know if I can provide more information.

Sincerely yours,

Anne M. Murphy, M.D.

Anne M. Murphy M.D.

AMM:br

SENATE HEALTH & WELFARE
EXHIBIT NO. #26
DATE 2/17/89
BILL NO. SB 437

TESTIMONY ON SB 437
PRO-FAMILY WOMEN'S LOBBY
Helena, MT.

Senate Bill 437, if enacted, would tie the hands of physicians to combat the AIDS epidemic in Montana. Section 4 of SB 437 that requires informed written consent of the subject of the test hinders the physician in the routine practice of medicine. Illinois overturned their law requiring written informed consent and Florida may soon follow suit.

Anonymous, confidential, voluntary testing in other states has failed to identify the majority of those infected with HIV. InNew Mexico's Sexually Transmitted Disease study, everyone who came in for treatment was given the opportunity to take an HIV test. Eighty-six percent volunteered to be tested; 14 percent refused. Since the doctors had blood samples of everyone, theydidblind tests of those who refused. Those who refused the test were 5 times more likely to be infected than those who volunteered.

An aggressive program of contact tracing to identify those infected with HIV is essential to prevent the spread of AIDS. The recent multimillion dollar settlement in the Rock Hudson case, has set a precedent that those infected with HIV are under moral and legal obligations to disclose their sex contacts. Quite to the contray, Section 4 of SB 437 states, "The health care provider shall inform the subject that he is under no legal obligation either to disclose names of contacts or to authorize their notification."

The importance of pre-test counseling in this bill is overstated. In October 1988 the Saturday Evening Post published an article regarding military testing where little or no pre-test counseling is provided. After 3½ years and over 4 million recruits, there have been no reports of suicides or psychological problems in the 3,000 re-

cruits testing positive for HIV. Also I question the need for and the practicality of in Montana requiring CDC certified counselors for all pre and post test counseling.

The sections of SB 437 relating to counseling, testing, and the need to give HIV test results in person may have no practical application if home test kits for AIDS are approved by FDA. With a home test kit, an individual draws his/her own blood and sends the sample to a lab with a number. Test results are then related by telephone. Home test kits are in great demand and in all likely hood will be approved by FDA.

Under Section 4 regarding who the test results must be given to, the subject's spouse is listed but live-in lovers and others known to be sexually intimate with the subject are not included. Since knowledge of infection is our best defense against AIDS, these individuals must be told as well.

In conclusion SB 437 is regressive in nature and will actually hinder physicians and public health authorities in their attempts to combat the AIDS epidemic in Montana. Testing for HIV infection should be a routine part of the practice of medicine - not something that is hidden under lock and key. Vigorous leadership coupled with accurate education and traditional public health measures will be the best things doctors can do.

Patty Carrell
Pro-Family Women's Lobby
2/17/89

SB437
2/17/89

Amendments to SB 437
Proposed by Senator Norman

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"(12) "Pretest counselling" means the provision of written materials to the subject prior to conduct of a HIV test. The written materials shall be developed and provided by the department."

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13. Page 10, ln 2-4, are to be deleted.

VISITORS' REGISTER

STATE ADMINISTRATION COMMITTEE

Public Health

DATE: 2/17/89

NAME	REPRESENTING	BILL #	Support	Oppose
Gary R Haugh	TEMS Region IB	454 407	X	
Owen Warren	AARP.	407	X	
[illegible]	Tobacco Free	424	X	
Robert R Johnson	L+C Health Dept	426	✓	
Robert R Johnson	L+C Health Dept	437	✓	
Karen Landers MD	Self Helena	426	✓	
Mary Beth Traders	Montana AIDS Coalition	437	✓	
[illegible]	Missoula [illegible]	437	X	
Ron Tibbs	MD - UM	437		? Amend
BEVERLY CLAGETT	MISSOULA COMMUNITY TRANSPORT SERVICE	407	✓	
LARRY AKEY	MT HEALTH NETWORK	407	✓	
"	MT ASSOC OF LIFE UNDERWRITERS	437		AMEND
Jim Ahrens	MT Hosp Assoc	437		
APRIL MILROY	Garfield Amb. Service	407	X	
Ada Wedding	Garfield Amb. Service	407	X	
Nina Sanders	MT Women's Lobby	437	X	
John Olsen	MT Athletic Coaches	437	X	
Brenda Nordlund	MT Women's Lobby	437	X	
Bonnie Lofer	Mont. AIDS Council	437	X	
Lois L. Heinrich	MT Nurses Assoc.	437	X	
Madeline Fitzgerald	Mt. Nurses Assoc.	407 454	X	

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

VISITORS' REGISTER

STATE ~~ADMINISTRATION~~ COMMITTEE Public Hea

DATE: 2/17/89

NAME	REPRESENTING	BILL #	Support	Oppose
[illegible]	MMA	407	X	
[illegible]	M.M.A.	437	X	
Thomas Dirigen	MMA	407	X	
Brian Asay	Mt. Family Coalition	437		X
Lyle Nagel	MT St. Vol Firefighters	454	X	
"	"	407	X	
Henry E Lehr	MT St. Vol Firefighters	454	X	
"	"	407	X	
RICHARD SEDDON	MT. ST. FIREMENS ASSOC	407 454	X	
Bill Webber	Roc FD / Belgrade FD / Hills Emerg	407/454	X	
MARK FIORENTINO	HALLS EMERGENCY	407/454	X	
TIM BERGSTROM	BILLINGS FIRE FIGHTERS	454	X	
Toni Jensen	Rocky Mt Tobacco Unit	426	X	
Jim Luiten	Health Dept	426	X	
Karen Malloni	Cancer Society	426	X	
[illegible]	Lung Assoc.	426	X	
[illegible]	Private / 1st Bank	426	X	
Shelley [illegible]	Cancer Society	426	X	
Kathleen Cornelius	Facion Co. Ambulance Assn	454 407	X X	
Rick Bandy	MONTANA EMS ASSN	454 407	X	
ART BICSAK	MT PRIVATE AMBOR.	454 407	X	

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

VISITORS' REGISTER

STATE ADMINISTRATION COMMITTEE

Public Health

DATE: 2/17/89

NAME	REPRESENTING	BILL #	Support	Oppose
Rick Christi	MDHES	SB 437	Amendments Requested	
Joanne Shearer	Myself	SB 437		✓
Brenda Desmond	myself	SB 437	✓	
Allen Chronister	[illegible]	SB 437	✓ with Amendments	
Ken Treat	MYSELF	437	✓	
Patty Currell	Pro-Family Women's	Lobby 437		✓
Tom Hopgood	Health Ins Assoc.	437	AMEND	
Neil Egan	Helena AIDS Support Network	437	Yes	
Tim HARRIS	MT. IND. LIVING PROJ	437	✓	
~~[illegible]~~		~~437~~		
Rose Hughes	MHCA	437		Amend

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

ROLL CALL VOTE

SENATE COMMITTEE PUBLIC HEALTH

Date 2/17/89 Bill No. 437 Time

NAME	YES	NO
SEN. TOM HAGER	X	
SEN. TOM RASMUSSEN	X	
SEN. LYNCH	X	~~absent~~
SEN. HIMSL	X	
SEN. NORMAN	X	
SEN. McLANE	X	absent
SEN. PIPINICH	X	

Louise Sullivan
Secretary

Sen. Tom Hager
Chairman

Motion: Norman moved that amendments 1-13 (6A, 7) ~~to~~ be in favor be adopted 0 - opposed.

1987

ROLL CALL VOTE

SENATE COMMITTEE PUBLIC HEALTH

Date 2/17/89 Bill No. SB 437 Time

NAME	YES	NO
SEN. TOM HAGER	X	
SEN. TOM RASMUSSEN	X	
SEN. LYNCH	X	
SEN. HIMSL	X	
SEN. NORMAN	X	
SEN. McLANE	X	
SEN. PIPINICH	X	

Dorothy Quinn
Secretary

Sen. Tom Hager
Chairman

Motion: by Sen Norman that SB 437 Do Pass as Amended

Tim Sheehy C appear

1987

DISPOSITION OF SB 407

Motion: Rep. Good made a Motion to BE CONCURRED IN.

Discussion: Rep. McCormick stated that this was a bad bill for people in smaller communities as did Rep. Russell.

Rep. Strizich stated that there was good testimony offered by the proponents and opponents and supports this legislation.

Rep. Lee stated his support of this bill.

Rep. Knapp supports this bill but with added amendments regarding rule making authority.

Rep. Good stated that smaller towns would have recourse which would be upheld. The main intent of the bill is to grant rule making authority. The rural towns do have a safeguard in this bill.

Rep. Gould stated that we do have the administrative code committee which looks at the rules closely and when there opposition there is a hearing and that usually takes care of a problem.

Rep. Simon initially opposed this bill but after the testimony was offered, and after he had questioned the Department for a specific reason, the Department's testimony is a permanent part of this committee's record as to what their intent is. The administrative code committee and everyone that wants to challenge these rules can use the Department's testimony in fighting any rules that they think are adverse to a small community for financial reasons or any other reasons. There are good protections built into this bill and consequently he supports this bill.

Rep. Hansen told of receiving telephone messages from several communities in Montana.

Recommendation and Vote: A vote was taken TO BE CONCURRED IN and all voted in favor with the exception of Reps. Knapp and McCormick. Motion carries.

HEARING ON SB 437

Presentation and Opening Statement by Sponsor:

Senator Norman stated that this bill was an act entitled the aids prevention act; mandating that HIV antibody testing be administered only in conjunction with adequate pretest and posttest counseling; requiring informed consent for HIV antibody testing; providing for confidentiality of HIV test results in a manner consistent with he requirements of the Uniform Health Care Information Act; and requiring HIV

antibody testing of donors of semen and human body parts.

Testifying Proponents and Who They Represent:

Ellen Leahy, Missoula City County Health Department
Larry Akey, Montana Health Network
Mary Beth Frideres, Montana Aids Coalition
John Ortwein, Montana Catholic Conference
Bob Johnson, Montana Public Health Association
Sharon Dieziger, Montana Nurses Association
Jerry Loendorf, Montana Medical Association
Diane Sands, Montana Women's Lobby
Peter Funk, Attorney General's Office
Bonnie Leifer, Missoula Aids Council
Neil Egan, Helena Aids Support Network

Proponent Testimony:

Ellen Leahy stated that as a public health official she had the responsibility to control contagious diseases. Ms. Leahy said there was one sure measure of controlling the spread of the aids virus with counseling.

Larry Akey supplied amendments to this bill. Exhibit 11.

Mary Beth Frideres stated that there were issues in this bill the fact the HIV testing be administered only in conjunction with appropriate posttest and pretest counseling.

John Ortwein stated that he was supplying testimony from Tim Harris in Exhibit 12.

Bob Johnson stated that the most important elements of the bill still exist and that is with this test, and all of the problems associated with the test, the test could not be imposed on anyone without their consent.

Sharon Dieziger stated her support of this bill.

Jerry Loendorf stated that this bill allows a person to be tested with appropriate confidentially and appropriate counseling and if the test is positive, it requires the provider to encourage the person to inform others he might have had contact with, which would result in the spread of aids or to allow the health care provider to notify such persons and provides for the testing of prospective donors of organs.

Diane Sands stated that she had been involved with the drafting of the bill and urged the passage.

Peter Funk stated that from the Department of Justice's point of view, the legislation is supported and think

that it is certainly a good first step in dealing with the problem of aids in Montana and also stated that the language in a portion of bill directs the attorney general's office to maintain a civil action to enforce compliance with the provisions of the bill. The way that the attorney general's office is currently structured, their are really no lawyers who do original trial work from the plaintiff's side and particularly with civil litigation. Consequently, the Department wishes this to be amended.

Bonnie Leifer stated that she supported this bill.

Neil Egan stated that he supported this bill and said that any legislation that helps a person guarantee his confidentiality and accurate information distributed among the population in general and those potentially at risk in HIV positive is extremely important in addressing this issue.

Testifying Opponents and Who They Represent:

None.

Opponent Testimony:

None.

Questions From Committee Members: Rep. Simon asked Mr. Anderson what rules the Department might adopt for the extension of authority on the bill and would it only extend the Department's authority to adopt rules to the definition of a communicable disease and the reporting and control of communicable diseases. Is there any possibility that rules would be outside the scope of this and require a statement of intent. Mr. Anderson stated that he felt this bill would necessitate a statement of intent.

Rep. Good asked Mr. Hopgood what would happen if a person wanted to buy an insurance policy and a person was tested positive for aids, will the information be allowed to be turned over to the insurance company in order for them to make a decision. Mr. Hopgood stated that it would.

Closing by Sponsor: Ellen Leifer closed on the bill for Senator Norman.

DISPOSITION OF SB 437

Motion: Rep. Brown made a Motion TO BE CONCURRED IN.

Amendments, Discussion, and Votes: Rep. Brown moved the Akey amendments. A vote was taken and all voted in favor. Rep.

Nelson moved the Funk amendments. A vote was taken and all voted in favor.

Recommendation and Vote: Rep. Brown made a Motion TO BE CONCURRED IN AS AMENDED. A vote was taken and all voted in favor. Motion carries.

HEARING ON SB 454

Presentation and Opening Statement by Sponsor:

Senator Walker stated that this bill was an act to allow emergency service personnel exposed to infectious disease during transport or patients to health care facilities to be notified of measures necessary to prevent or control the spread of the disease; to require confidentiality; to provide a penalty for a violation of confidentiality; to protect health service personnel from liability for good faith compliance with this act; and providing effective dates.

Testifying Proponents and Who They Represent:

Drew Dawson, Montana Department of Health and Environmental Sciences
Sharon Deziger, Montana Nurse's Association
Richard Seden, Montana State Firemen's Association
Lyle Nagel, Montana State Volunteer Firefighters Association
Gary Haigh, EMS Association

Proponent Testimony:

Drew Dawson stated that he believed this is a necessary bill to protect the health of emergency services workers throughout Montana. It protects the confidentiality of the patient while still assuring emergency services workers are provided with essential information about their exposure to the infectious disease. It places responsibility with the emergency services worker with the health care facility and with the physician. Exhibit 13.

Sharon Deziger supports this bill.

Richard Seden supports this bill.

Lyle Negel supports this bill.

Gary Haigh supports this bill.

Testifying Opponents and Who They Represent:

None

Opponent Testimony:

DAILY ROLL CALL

HUMAN SERVICES AND AGING COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date 3-13-89

NAME	PRESENT	ABSENT	EXCUSED
Stella Jean Hansen	✓		
Bill Strizich	✓		
Robert Blotkamp	✓		
Jan Brown	✓		
Lloyd McCormick	✓		
Angela Russell	✓		
Carolyn Squires	✓		
Jessica Stickney	✓		
Timothy Whalen	✓		
William Boharski	✓		
Susan Good	✓		
Budd Gould	✓		
Roger Knapp	✓		
Thomas Lee	✓		
Thomas Nelson	✓		
Bruce Simon	✓		

STANDING COMMITTEE REPORT

March 14, 1989

Mr. Speaker: We, the committee on Human Services and Aging report that SENATE BILL 437 (third reading copy -- blue) be concurred in as amended .

Signed: _____
Stella Jean Hansen, Chairman

[REP. JAN BROWN WILL CARRY THIS BILL ON THE HOUSE FLOOR]

And, that such amendments read:

1. Page 8, lines 17 through 21.
Following: "(1)"
Strike: remainder of line 17 through "if" on line 21
Insert: "Immediately prior to donation of an organ, semen, or tissues, HIV-related testing of a prospective donor is required unless"
Renumber: subsequent subsection

2. Page 11, line 16.
Strike: "attorney general"
Insert: "department"

Amendments to Senate Bill No. 437
Presented to House Human Services Committee
March 13, 1989

1. Page 8, line ~~14~~ 15 through ~~16~~ 18.
   Strike: Subsection (1) in its entirety.
   Renumber subsequent subsections.

2. Page 8, line ~~17~~ 20
   Strike: "Testing"
   Insert: "Immediately prior to donation of an organ, semen, or tissues, HIV-related testing"
   Strike: "of an organ or tissue"

3. Page 8, line ~~18~~ 21
   Following: "is"
   Strike: "not"
   Following: "required"
   Strike: "if"
   Insert: "unless"

With the amendments, subsection (2), now renumbered (1) will read as follows:

"Immediately prior to donation of an organ, semen, or tissues, HIV-related testing is required unless the transplantation of an indispensable organ is necessary to save a patient's life and there is not sufficient time to perform an HIV-related test."

EXHIBIT 11
DATE 3-13-89
HB SB 437

MONTANA INDEPENDENT LIVING PROJECT

38 South Last Chance Gulch
Helena, Montana 59601

(406) 442-5755
Toll Free 1-800-233-0805 (VOICE/TDD)

March 13, 1989

RE: SB 437 - AIDS Prevention Act

Madame Chairperson and members of the committee: I am Tim Harris and I am employed with the Montana Independent Living Project. The Project supports SB 437 and urges the committee to support the bill.

The tradgedy of AIDS knows no bounds, affecting the innocent as well as the not-so innocent, the rich and poor alike, crossing racial lines and geographic boundaries, sapping the very life from those directly infected and draining the psychological well being of families, friends and significant others. The ordeal is one which none of us ever wants to face. Until a cure is found, education is a must for everyone, especially high risk groups. SB 437 is a step toward prevention.

In working with people with disabilities, we understand the need for confidentiality, counseling, and informed consent. The onus of the disease in itself is burden enough for one to carry without the public at large knowing the details of one man's burden. We work hard at maintaining confidentiality for the sake of our consumers.

We also offer peer counseling for persons with disabilities, a service which also works well with folks who have been identified as HIV positive. A one-to-one relationship which offers support, understanding and education can bring a measure of healing to one who is hurting.

At present, the only way for us to put an end to AIDS is to provide quality information programs which not only detail safe practices for prevention but also describe services for support and treatment for those who are affected directly or indirectly by AIDS.

It is not you or I who stand here today infected by AIDS but we could be. Let's not wait until it's too late.

EXHIBIT 12
DATE 3-13-89
HB SB 437

MISSOULA CITY-COUNTY HEALTH DEPARTMENT

February 16, 1989

Representative Stella Jean Hansen, Chair
Human Services and Aging Committee
Montana House of Representatives
Capitol Building
Helena, MT 59620

Dear Representative Hansen,

I am writing in support of SB 437, the AIDS Prevention Act.

As a local public health official, I am responsible for the control of communicable disease. Control of the spread of HIV, the virus that causes AIDS, is particularly difficult as we have no vaccine or cure available. We do, however, have the opportunity to provide education directly to persons infected and at risk of infection when they present for HIV antibody testing. In fact, the practice of counseling and testing is the cornerstone of AIDS prevention activities.

In our function as one of the state's Counseling and Testing Sites, our department provides testing only in conjunction with counseling. SB 437 could extend this communicable disease control measure to persons who present for testing somewhere other than Counseling and Testing Sites as about 60 percent of test subjects do in this state.

SB 437 has undergone amendments necessary for the broad-based support it now represents. I strongly urge your committee to promote one of the few communicable disease control methods we have available to us for the control of AIDS and favorably recommend SB 437 for passage.

Sincerely,

Ellen Leahy

Ellen Leahy, R.N., M.N.
Acting Health Officer

EXHIBIT 14
DATE 3-13-89
~~HB~~ SB 437

VISITORS' REGISTER

HUMAN SERVICES AND AGING COMMITTEE

BILL NO. SB 437 DATE 3/13/89

SPONSOR

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Ellen Leahy	Missoula City - County Health	X	
Bonnie Leifer	Missoula AIDS Council	X	
Wilbur Rehmann	Helena - MNA	X	
Robert R. Johnson	Helena -	✓	
Jim Harris	Montana Independent Living Project	✓	
Mary Beth Frideres	Montana AIDS Coalition	✓	
Jerry Loendorf	MT. Med. Assn	✓	
Larry Akey	MT Health Network	✓ w/ Amend	
Sharon Mezzenga	Mt Nurses Assoc	✓	
Diane Sands	MT Women's Lobby	✓	
Sandra L. Hale	Clancy	✓	
John Ortwein	MT Catholic Conf	✓	
Neil Egan	Helena AIDS Support Network	✓	
Nancy [illegible]	MT Women's Lobby	✓	
Tom Hopgood	Health Ins. Assoc. America		
[illegible]	[illegible]	✓	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.